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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,727	06/27/2001	Scott Swix	7780-001040 (60027.0018US	4789

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AT&T Legal Department - LNAP
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EXAMINER	
PARRA, OMAR S	

ART UNIT	PAPER NUMBER
2421	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/892,727	SWIX ET AL.	
	Examiner	Art Unit	
	OMAR PARRA	2421	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12/29/2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-10,12-22,24-27 and 29-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 2, 4-10, 12-22, 24-27 and 29-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 12/19/2008 have been fully considered but they are not persuasive.

In response to applicant's argument:

The applicant argues that: *"Because the service request can be a user-initiated request received at the front panel 72 of the receiver and not over the network connection, the above cited passage is not the same as, or equivalent to, determining whether a network connection is functional"*, Remarks, page 10. To this matter, the examiner respectfully disagrees.

Middeke teaches a system for remote diagnostic of a receiver (at least, title or abstract). Middeke teaches that service center sends a message to the receiver through the satellite connection for requesting diagnostic information (col. 4 lines 52-60). Once detection of the network received message, the processor using the software stored in the receiver memory, performs the method 120 of Fig. 4 (col. 5 lines 60-67). The cited portion (col. 6 lines 1-15), teaches the microprocessor monitoring to determine if a service request has been received. The microprocessor monitors the satellite RF link via the antenna 34, which permits service center initiated requests, col. 6 lines 7-16. Additionally, Middeke teaches of the additional feature of letting the user to initiate the request for gathering diagnostic information. A user can initiate gathering information if the user does not want to interact with the service center or if the signal is lost and no

satellite signal is received (col. 5 lines 7-12). The existence of an alternate user-initiated request of diagnostic does not preclude Middeke's system of having the service center diagnostic request to be sent through the network, and therefore, covering the argued limitation.

Additionally, the applicant argues that *"An interface of a media delivery device can receive a service request without the first diagnostic agent being functional to collect diagnostic data, because a request can be received at a device without any action resulting from the request. Thus, the microprocessor detecting service request at the interface is not the same as determining that the first diagnostic agent of the media delivery device is functional",* page 11. To this matter, the examiner respectfully disagrees.

As explained above, the user-initiated request is an alternate option for receiving the request, but that does not preclude the receiver to obtain the request from the service center through the network link. The fact that the processor monitors the RF link for a request, and when received, with the instructions stored on the device's memory, performs the gathering of the diagnostic information, is an indication that the network connection is functional and that the first diagnostic agent is functional because upon the reception of the message, the gathering of diagnostic information is performed (col. 5 line 60-col. 6 line 29). Therefore, the examiner respectfully believes that the applicant-argued limitation is covered by the art of record and respectfully keeps the rejection of record.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims **1, 2, 4-10, 12-22, 24-27 and 29-36** are rejected under 35 U.S.C. 103(a) as being unpatentable over Middeke et al. (US 6445907) in view of Medvinsky (Patent No. 6,754,908).

Regarding claims 1 and 27, Middeke et al. ("Middeke") teaches a method for analyzing the operation of a media delivery device (Col. 2, lines 1-20), the method comprising the steps of:

determining whether a network connection is functional (by monitoring whether a service request is received from the service center 28; Col. 6, lines 1-15);

determining whether a 1st diagnostic agent is functional, in response to a determination that the network connection is functional (by detecting a service request at step 124, Col. 6, lines 17-18);

causing the 1st diagnostic agent, residing on the media delivery device, to collect diagnostic data associated with the media delivery device (STB), in response to a determination that the 1st diagnostic agent is functional (gathering diagnostic information; Col. 6, lines 19-30);

analyzing the diagnostic data to determine an operational problem associated with the media delivery device (STB) (service center analyses the received diagnostic

information; Col. 10, lines 60-63 and service technician remotely trouble-shoot and reconfigured the receiver; Col. 10, lines 35-55); and

receiving a command in the first diagnostic agent to perform at least one of rebooting the media delivery device, upgrading an operating system in the media delivery device, and performing a remedial action related to the network connection, in response to a determination that the network connection is not functional (col. 10, lines 35-62—commands are sent to the receiver to mitigate reported problems, the commands including resetting the receiver and resetting customer preferences to factory defaults);

Middeke further discloses upon the diagnostic information has been transferred to the center, the service center can send commands to the receiver to reset the receiver to factory default (Col. 10, lines 35-41).

Middeke does not clearly disclose “removing the 1st diagnostic agent”, "uploading a second diagnostic agent to the media delivery device in response to a determination that the first diagnostic agent is not functional" and "removing the 2nd diagnostic agent."

However, in an analogous art, Medvinsky teaches a system that installs periodically a program to diagnose if a media delivery device (settop box) is malfunctioning (col. 9 lines 21-37; col. 11 lines 54-60). The software is removed from the memory after the diagnosis is finished (Abstract; col. 9 lines 21-37). Knowing that the software or message has an error, a new software/message is sent to the settop box.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Middeke to remove the diagnostic application after each process, as taught by Medvinsky for the benefit of not affecting or taking the risk of getting the settop boxes working properly to malfunction or for detecting intrusions from illegal users.

Regarding claim 2, Middeke in view of Medvinsky further discloses the step of uploading the first diagnostic agent to the media delivery device (STB) over an alternative network connection, in response to a determination that the network connection is not functional (reads on Middeke in which the remote technician at the remote service, i.e., workstation 30, by analyzing the diagnostic information received from the receiver, Col. 3, lines 40-Col. 15, the remote technician able to determine whether or not the network connection is functional. In view of the result, the remote technician able to reset the receiver to factory default including the first diagnostic agent that was pre-loaded by default based on the network communication status; Col. 10, lines 35-63; for example if the strength of the satellite transponder is weak, the only way to communicate between the receiver 24 and the remote service center 30 is through the communication line 32 of Fig. 1 so the technician able to troubleshoot the receiver 24).

Regarding claim 4, Middeke further discloses the step of remedying the operational problem (Col. 10, lines 35-42).

Regarding claim 5, "the step of uploading a second diagnostic agent to the media delivery device, in response to a determination that the network connection is not functional" is analyzed with respect to claim 1 in which Middeke's remote technician at the remote service, i.e., workstation 30, by analyzing the diagnostic information received from the receiver, Col. 3, lines 40-Col. 15, the remote technician able to determine whether or not the network connection is functional. In view of the result, the Middeke's remote technician in view of Medvinsky able to uploading a second diagnostic agent to the media delivery device through another communication link.

Claim 6 is analyzed with respect to claim 1.

Regarding claim 7, Middeke further discloses wherein the performance problem is also associated with a 2nd device functionality connected to the media distribution device (Col. 3, lines 40-Co1.4, lines 15 that has plurality of status of plurality connected devices to the receiver, i.e., smartcard status.

Regarding claim 8, Middeke further discloses the media distribution device is a STB (see Fig. 2; Col. 4, lines 15-40).

Claim 9 is analyzed with respect to claim 1.

Regarding claim 10, Middeke further discloses wherein the intelligent diagnostic agent is executable in the system memory (Col. 6, lines 18-30).

Regarding claim 12, "wherein the diagnostic service center can determine whether the diagnostic agent is functional" is further by Middeke' as analyzed with respect to claim 1 in which the remote service, i.e., workstation 30, able to receive the diagnostic information from the receiver.

Regarding claim 13 is analyzed with respect to claim 1.

Regarding claim 14, Middeke further discloses wherein the communication link is a broadband communication (see Fig. 1).

Regarding claim 15, Middeke in view of Medvinsky does not clearly disclose the use of an ADSL as communication link.

Official Notice is taken that the use of ADSL is notoriously well known in the art for telephone companies to offer "video dial tone" over twisted pair. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Middeke in view of Medvinsky to use ADSL as communication so to provide to user an alternative way to receive video at high-speed over telephone twisted pair network.

Regarding claim 16, Middeke further discloses wherein the communication link is a satellite connection (see Fig. 1).

Claims 17 and 18 are analyzed with respect to claim 1.

Claim 19 is analyzed with respect to claim 2.

Regarding claim 20, Middeke further discloses a media delivery service provider operative to transmit a media content stream to a media distribution device (see Fig. 1).

Claims 20, 21, 25, 26 are analyzed with respect to claim 1.

Claim 22 is analyzed with respect to claim 2.

Claim 24 is analyzed with respect to claim 4.

Claim 29 is analyzed with respect to claim 2.

Regarding claim 30, Middeke further discloses wherein the at least one 2nd communication path comprises a wireless link (Col. 3, lines 30-32).

Regarding claim 31, Middeke further discloses wherein the wireless link comprises satellite communication (Col. 3, lines 30-32).

Regarding claim 32, Middeke in view of Medvinsky further discloses wherein code related to the at least one 1st diagnostic software agent is stored in the at least one device at the remote site for diagnostic testing and is later removed to allow more storage during an operational condition of the at least one device (see analysis of claim 1).

Regarding claim 33, Middeke further discloses wherein the at least one first diagnostic software agent is interactive with a customer through a presentation device (Col. 4, lines 60-67+).

Regarding claim 34, Middeke (Col. 3, lines 40-Col. 4, lines 15) in view of Medvinsky further discloses the step of entering identification of the media delivery device in a service log.

Regarding claim 35, Middeke (Col. 4, lines 48-Col. 5, lines 13) in view of Medvinsky (see analysis of claim 1) further discloses wherein entering the identification of the media delivery device is performed autonomously by the diagnostic agent.

Regarding claim 36, Middeke in view of Medvinsky (Col. 3, lines 15-21) further discloses "presenting a user interface over the media presentation device; and receiving input from a user via the user interface."

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMAR PARRA whose telephone number is (571)270-1449. The examiner can normally be reached on 9-6 PM (M-F, every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/
Supervisory Patent Examiner, Art Unit 2421

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